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Ontario

# THE COURTS

A STATEMENT BY THE HONOURABLE WILLIAM G. DAVIS

PREMIER OF ONTARIO

TO THE

FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

ON THE CONSTITUTION

OTTAWA, ONTARIO

TUESDAY, OCTOBER 31, 1978

I WILL NOW DIRECT MY COMMENTS TO THE JUDICIARY AND, IN PARTICULAR, TO THE HIGHEST COURT OF OUR LAND - THE SUPREME COURT OF CANADA.

THE SUPREME COURT OF CANADA PERFORMS A CRITICAL FUNCTION WITH RESPECT TO FEDERAL-PROVINCIAL RELATIONS. ON SPECIFIC QUESTIONS OF JURISDICTION, IT DECIDES WHETHER THE FEDERAL GOVERNMENT, OR THE PROVINCES, HAS THE AUTHORITY TO LEGISLATE IN RELATION TO A PARTICULAR ACTIVITY.

SIMPLY PUT, EACH DECISION OF THE SUPREME COURT WHICH BEARS UPON THE FEDERAL-PROVINCIAL RELATIONSHIP HAS THE EFFECT OF INCREASING OR LIMITING THE POWERS OF ONE LEVEL OF GOVERNMENT AT THE EXPENSE OF THE OTHER.

CLEARLY, THIS IS AN EXACTING OBLIGATION WHICH CAN ONLY BE PERFORMED BY AN INSTITUTION WHICH IS INDEPENDENT, WHICH IS IMPARTIAL, AND FUNDAMENTALLY, WHICH IS PERCEIVED AS BEING IMPARTIAL.

WHEN, THEREFORE, WE CONSIDER ANY PROPOSALS ABOUT THE COURT, WE MUST BE CERTAIN THAT THE RESULT WILL BE TO PROTECT ITS INTEGRITY.

In previous discussions of this subject, we have considered various proposals and differed in some specifics, but I think it is fair to conclude that we share a mutual understanding of the basic principles with regard to the Court that must be pursued in the Constitution. In this spirit, I wish to state Ontario's position.

There are three specific areas: the appointment process, the composition of the Court and the jurisdiction of the Court.

In 1976, the ten Premiers agreed that the provinces should play an active part in the appointment of justices to the Supreme Court of Canada. Ontario thinks that the body which interprets disputes between governments should be appointed through a process of active collaboration among the elected representatives of the eleven governments. In addition, we believe that the process should be straightforward and workable.

Accordingly, we recommend that the Governor General-In-Council should appoint justices to the Supreme Court of Canada from a list of candidates drawn up by a National Judicial Nominating Council. This Council would be composed of the Attorneys General of the provinces and the Attorney General of Canada.

In 1971, in Victoria, the First Ministers agreed that the Supreme Court of Canada be composed of nine justices. Ontario continues to support this proposal. Three of the justices should be appointed from the Province of Quebec with the remaining six justices appointed at large without consideration of regional ratios.

We advocate the retention of a nine member court for a number of very good reasons. This number is capable of handling the caseload demands without being excessively burdened. It is large enough to accommodate the two legal systems. It provides a variety of legal knowledge and is conducive to the process of judicial debate.

I naturally hope -- and expect -- that the selection of justices to the court would, as a matter of practice and common sense, take into account that we have distinguished potential candidates from across this country. But to suggest that judge X or judge Y come from province A or province B is to deny the overriding principle of merit.

We want men and women of sound learning and proven ability. In providing specifically for the selection of judges from Quebec, this principle is not breached. It is not Quebec that is being represented but the unique Civil Code of that province.

THE BRITISH NORTH AMERICA ACT FASHIONED A SINGLE HIERARCHIAL SYSTEM OF COURTS FOR THIS COUNTRY. WHAT THIS MEANS IS THAT A SINGLE SYSTEM OF COURTS INTERPRETS BOTH FEDERAL AND PROVINCIAL LAW, AND THAT ULTIMATELY ANY LEGAL DISPUTE, WHETHER CIVIL, CRIMINAL OR CONSTITUTIONAL, CAN BE APPEALED FOR A FINAL RULING TO THE SUPREME COURT OF CANADA.

WE HAVE THUS AVOIDED THE COMPLEXITIES AND EXPENSE OF A DUAL COURT SYSTEM. THIS CONCEPT SHOULD BE PRESERVED BY ENTRENCHING IN THE CONSTITUION THE JURISDICTION OF THE SUPREME COURT OF CANADA AS THE COURT OF FINAL APPEAL.

FINALLY, I WOULD URGE THAT WE GIVE CONSIDERATION TO THE APPOINTMENT OF JUDGES OF THE SUPERIOR, COUNTY AND DISTRICT COURTS OF THE PROVINCES BY THE LIEUTENANT GOVERNOR-IN-COUNCIL. SUCH PROVINCIALLY APPOINTED JUDGES WOULD CONTINUE TO HEAR CASES INVOLVING MATTERS OF FEDERAL AND PROVINCIAL LAW.

THE PRESENT PRACTICE IS QUITE SIMPLY INEFFICIENT. ON THE ONE HAND, THE PROVINCE IS RESPONSIBLE FOR ESTABLISHING AND MAINTAINING THESE COURTS. ON THE OTHER, THE FEDERAL GOVERNMENT IS RESPONSIBLE FOR THE APPOINTMENT OF THE JUDGES AND THE PAYMENT OF THEIR SALARIES. TOO OFTEN, THERE HAVE BEEN PROLONGED DELAYS IN THE APPOINTMENT OF JUDGES, A SITUATION WHICH DETRACTS FROM EFFECTIVE ADMINISTRATION OF JUSTICE.

MOREOVER, THE CURRENT SITUATION PREVENTS THE PROVINCES FROM ADAPTING THE COURTS SO THAT THEY ARE MORE RESPONSIVE TO THE CHANGING NEEDS OF SOCIETY. FOR EXAMPLE, IN ONTARIO THIS SPLIT RESPONSIBILITY IS MAKING IT PARTICULARLY DIFFICULT TO ESTABLISH A SYSTEM OF UNIFIED FAMILY COURTS IN WHICH ALL ASPECTS OF FAMILY LAW CAN BE CONSIDERED BY A SINGLE JUDGE.

COMMON SENSE SUGGESTS THAT THIS ARTIFICIAL DIVISION OF RESPONSIBILITY SHOULD BE ENDED.